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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,801	08/07/2002	Fernando Alberto Grazziotin	4358-4000	6217
27123	7590	11/30/2005		
MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101			EXAMINER GREEN, BRIAN	
			ART UNIT	PAPER NUMBER
			3611	

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/049,801	Applicant(s) GRAZZIOTIN ET AL.	
	Examiner Brian K. Green	Art Unit 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 2,3,5 and 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,6-8 and 10-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 August 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Claims 2,3,5, and 9 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **with** traverse in the response filed on 8/16/2004.

Drawings

The drawing changes submitted on May 16, 2005 and Aug. 30, 2005 have not been approved since they contain new matter. In figure 3 the applicant added a box around the separated segments which is considered to be new matter. The separated elements in figure 3 should be embraced by a bracket and not a box. New figures 7 and 8 have not been approved since they contain new matter. In regard to figure 7, the original specification and drawings fail to provide support for arranging the astrological signs on the hand as shown, the particular symbols shown on the hand for the horoscope, the arrangement of the date and numbers below the hand, and the arrangement of the astrological signs and months below the hand is all considered to be new matter. In regard to figure 8, the original specification and drawings fail to provide support for the arrangement of music above the hand, the music placed on the fingers of the hand, the days of the week on the hand, the dates (year and months) and music placed below the hand, and the arrangement of the numbers (1 8 etc.) below the music is all considered to be new matter.

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Since the replacement sheet filed on May 16, 2005 and the new sheets filed on Aug. 30, 2005 have not been entered since they contain new matter the figures still include the following objections.

The drawings are objected to because in figure 3 the separated elements should be embraced by a bracket. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the astrological symbols defined in claim 6, the numbers 1-8-15-22-29 or symbols defined in claims 7 and 11, musical notes and

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tones defined in claim 8, and the days of the month defined in claim 12 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The amendment filed May 16, 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The additional language added on page 5, at line 9 stating that the astrological signs are of the "zodiac".

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Objections

Claims 6, 16, and 20 are objected to because of the following informalities: In claim 6, line 5, “the representative area” should apparently be “a representative area” since there is no antecedent basis for “the representative area”. In claims 16 and 20, lines 1-2, ““first representative component is formed with seven areas” is repetitive with claim 13, line 3. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 13-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Stating in claim 13 that the seven areas are arranged in a substantially radial continuous order is considered to be new matter since the original specification and drawings fail to provide support for this new language. The seven areas in the applicant’s elected embodiment of figures 1-4 are not arranged in a radial continuous manner. Stating in claim 13 that the first and second representative components create a calendar which is not in a tabular format is considered to be new matter. The data in the applicant’s elected embodiment of figures 1-4 is considered to be arranged in an orderly manner and is therefore considered to be in a tabular

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format. The subject matter in claim 19 is considered to be new matter. The subject matter in claim 21 is considered to be new matter.

Claims 4,6,10,11, and 13-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, line 5, it is not clear whether the “seven representative areas” is the same as the “seven areas” defined in claim 1 or the “seven associated areas” defined earlier in claim 4. In claim 4, line 9, “preferring the numbers first, eighth, fifteenth” is indefinite since the metes and bounds of the claim can not be determined since it is not clear whether the applicant is positively claiming the “first, eighth, fifteenth, twenty-two and twenty-nine”. In claim 6, line 3, it is not clear whether the “seven areas” is the same as the “seven areas” defined in claim 1. In claim 11, line 4, “calendar” is confusing since it is not clear whether the applicant is referring to the calendar referred to in claim 1 or earlier in claim 7 or to an additional calendar. In claim 10, line 8, “each segmented element” is confusing since it is not clear what element the applicant is referring to. In claim 13, line 14, it is not clear whether “first and second representative components” are the same as the ones defined earlier in claim 13. In claim 17, lines 2-3, there is no antecedent basis for “the areas corresponding to fingers” and for “the areas corresponding to a palm”.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,10, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by De Loof (U.S. Patent No. 1,217,422).

De Loof shows in figure 1 a visual sensitive calendar with seven areas (Sun-Sat) representing days of the week and elements (Jan. – Dec.) representing months of the year. The days of the week for each month can be determined from the calendar taught by De Loof, see page 1, column 1, lines 26-46. In regard to claim 10, the first day of any given month is determined by counting back 6 days from the day of the week that the month is listed under. The symbol “7” is used in determining what day of the week a particular day of a month falls on. For example, De Loof shows the symbol “7” under Wednesday and the month of June is also under Wednesday. This means that the dates 7-14-21-28 in June fall on a Wednesday and 1-8-15-22-29 in June fall on a Thursday. In regard to claim 10, De Loof discloses that the calendar can be placed on a pencil, penholder, ink-bottle cap, or dater. In regard to claim 12, as broadly defined, the columns formed by “Sun, May”, “Mon, Feb, Aug”, “Tue, Mar, Nov”, and “Wed, Jun” are considered to simulate “finger segments of a hand”.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Loof (U.S. Patent No. 1,217,422).

In regard to claims 6 and 8, De Loof does not disclose making the representative elements in the form of astrological symbols or the days of the week in the form of musical notes. De Loof uses words to indicate the months of the year (Jan, Feb, etc.) and words to indicate the days of the week (Sun, Mon. etc.). It would have been obvious to one in the art to modify De Loof by making the representative elements in the form of astrological symbols and the days of the week in the form of musical notes since it is considered within one skilled in the art to use any type of indicia to indicate this information as desired, i.e. the specific form of the indicia is not considered to be a patentable feature. In regard to claims 7 and 11, De Loof does not use the use of numbers 1-8-15-22-29 or symbols that represent them on the calendar. De Loof discloses the use of the numbers 7-14-21-28, see page 1, column 1, lines 40-48. De Loof shows in figure 1 the number "7" on the calendar. For example, the 7th, 14th, 21st, and 28th of May fall on Sunday. Therefore, the symbol "7" also indicates that the 14th, 21st, and 28th also fall on the same day as the seventh of a given month. It would have been an obvious matter of design choice to one in the art to modify De Loof by using 1-8-15-22-29 or symbols that represent them on the calendar since the applicant fails to define any advantage to using these numbers and the numbers 7,14,21,28 defined by De Loof would work equally as well.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over De Loof (U.S. Patent No. 1,217,422) in view of Knight (U.S. Design Patent No. 38,938).

De Loof discloses the applicant's basic inventive concept except for making the calendar in the shape of a human hand. Knight shows in the figure the idea of making a calendar in the shape of a particular object to create a more aesthetically pleasing calendar. In view of the teachings of Knight it would have been obvious to one in the art to modify De Loof by making the calendar into a particular shape since this would create a more amusing and aesthetically pleasing display. It is considered within one skilled in the art to make the calendar into any particular shape (human hand) as desired.

Response to Arguments

Applicant's arguments filed May 16, 2005 have been fully considered but they are not persuasive.

The applicant argues that De Loof does not show seven representative areas as recited in claim 1 and that simply writing the days of the week within a single rectangle is not sufficient. The examiner disagrees since De Loof shows in figure 1 seven representative areas (the rectangular area for each day of the week which includes the day of the week and the area directly below it) which are explicitly or implicitly perceptible. The examiner maintains that it is proper to call each of these rectangular sections a representative area.

The applicant argues that De Loof does not disclose the claimed relationship between the symbols, colors or other elements that represent months as related to a day of the week and the sequential order of the seven areas. The examiner disagrees since De Loof shows in figure 1 that each of the representative area includes characters, symbols, or other elements (this can be the

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letters or words from the day of the week or the month of the year). De Loof shows in figure 1 that the days of the week are in sequential order.

The applicant argues that De Loof does not show the sequential segmented areas recited in amended claim 10 or the representative areas corresponding to one of segments of a human hand or segments of a clock face as defined in claim 12. De Loof shows in figure 1 that the days of the week are in sequential order. Each rectangular area in De Loof is considered to be similar in shape to a segment of a human finger, i.e. rectangular from a front perspective.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Green whose telephone number is (571) 272-6644. The examiner can normally be reached on M-F 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


BRIAN K. GREEN
PRIMARY EXAMINER

Bkg
Nov. 28, 2005